IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 138 of 1995

DATE OF DECISION: 23.8.2007

M/s Kulwant Rai Gian Chand

…Applicant

Versus

The Commissioner of Income-tax, Patiala.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. S.K. Mukhi, Advocate,
for the applicant-assessee.

Mr. S.K. Garg Narwana, Advocate,
for the respondent-revenue.

JUDGMENT

M.M. KUMAR, J.

At the instance of the assessee the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal'), has exercised jurisdiction under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act') opining that a question of law would emerge from its order dated 28.12.1992 in I.T.A. Nos. 833 Chandi/87 and 1306/Chandi 89, in respect of the assessment year 1982-83. The following question has been referred for opinion of this Court:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the clubbing of income of the trust in the hands of the assessee firm?"

Facts as revealed from the statement of the case are that the assessee is a registered firm and deals in various food grain items as commission agent. Accounting period which ended on 31.3.1982 is the

relevant period for the assessment year of 1982-83. The assessee had claimed that the firm stood dissolved on 30.9.1981 and that the income earned in respect of the period from 1.10.1981 to 31.3.1982 belonged to the trust, namely, Kulwant Rai Gian Chand Family Trust, and it cannot be assessed at the hands of the firm. The Assessing Officer took the view that in the absence of original dissolution deed on record, the firm could not be considered to be dissolved with effect from 30.9.1981. Accordingly, the Assessing Officer clubbed the income of Rs. 93,250/- in the hands of the assessee and rejected the claim that the aforementioned amount belonged to the trust (Annexure 'A').

On appeal before the CIT (A), the view taken by the Assessing Officer was upheld. The CIT (A) examined various entries appearing in the balance sheet of the trust and the assessee firm along with other relevant details. He came to the conclusion that the assets and liabilities of the assessee firm were not taken over by the trust. Moreover, it was found that it was simply an extension of the same books of account and the same business (Annexure 'B').

On further appeal to the Tribunal, the assessee again failed and the view with regard to clubbing of income of Rs. 93,250/- in the hands of the assessee firm was affirmed. The view of the Tribunal is discernible from para 12, which reads as under:-

> "12. We have carefully considered the rival submissions, as also the fact on record. No single fact or factor is determinative of the issue. It is an archetypal effect of series of fact and factor which point to the direction of there being no dissolution of the assessee firm on 30.9.1981, as claimed. In the first instance there was no contemporaneous evidence to show that the firm had been dissolved, the assessee firm did not give any intimation to the assessing officer regarding the said dissolution, the bank

authorities were never informed about such dissolution, the assessee firm even around 30.9.1981 was raising loans and was dealing with certain parties whose statements had been recorded, which indicated that they had no information about the dissolution of the assessee firm and they were dealing with the assessee firm as a continuing concern. No original dissolution deed was ever filed by the assessee, a photo copy of the dissolution deed, however, was filed during the course of assessment proceedings, which showed that the dissolution deed was not even witnessed. The Ld. CIT (A) made a painstaking research into various, entries as per balance sheet as on 31.3.1982, in the case of the Trust and came to the conclusion that all those balances reflected on the liability side of the balance sheet and their origin in the entries appearing in the books of the assessee firm. She conclusively proved that the funds of the assessee firm were utilised by the trust. The Ld. counsel for the assessee has not addressed us on these points which have been highlighted in the impugned order. The books of account were also not produced before the Ld. CIT (A), though demanded. Copy of the balance sheet of the assessee firm as on 31.3.1982, was also not produced. No account of realization of assets was filed before the Ld first appellate authority, though required by her. If the assessee had complied with these requirements and satisfied the authorities, then perhaps a different conclusion could have emerged. However, in the absence of any compliance by the assessee firm, the conclusion is inescapable that the business which was being carried on by the assessee firm continued to be carried on till 31.3.1982 also and that the

> view to avoid higher tax the assessee firm resorted to the story of dissolution. If all the factors mentioned by the Ld. CIT (A) and discussed above are placed together, then the conclusion, according to us, is that there was every justification for clubbing the income of the trust in the hands of the assessee firm, to which it really belonged. We also find some substance in the argument of the Ld. D.R. that on the one hand the agreement of 1.10.1981 between Tara Chand and Prem Chand, talks of differences amongst the partners of the assessee firm and the desire of Nasib Chand to discontinue the business and, on the other hand, his agreement to the business being carried on by the Trust, of which he was the settler & whose beneficiaries were the minor sons of the two partners. This is rather unusual, ultimately the income has remained in the preserves of the family and has not gone out. Though on paper, the trust and the assessee firm are separate entities we have to look into the real nature of the transactions by piercing the veil and come to true substance of these transactions. Having regard to the entire facts and circumstances of the case we uphold the action of the Ld. CIT (A) in confirming the clubbing of income of Rs. 93,250/- in the hands of the assessee firm. The main issue is thus decided against the assessee."

After hearing learned counsel for the parties we are of the considered view that the question raised by the assessee is liable to be answered against it and in favour of the revenue. It would be profitable to read sub-sections (1)(2)(3)(3A) and (4) of Section 176 of the Act as it existed at the relevant time, which are as under:-

"176. (1) Notwithstanding anything contained in section 4, where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year up to the date of such discontinuance may, at the discretion of the Income-tax Officer, be charged to tax in that assessment year.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) Any person discontinuing any business or profession shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof.

(3A) Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance.

(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

(5) to (7) xxx xxx xxx"

A plain reading of sub-section (3) of Section 176 of the Act shows that intimation of discontinuation of any business or profession is required to be given to the Income-tax Officer within a period of 15 days from the date of discontinuation. It has not been shown that any intimation as per the requirement of sub-section (3) of Section 176 of the Act was ever given to the Income-tax Officer concerned. It has also been found as a fact that the original dissolution deed was never filed and the photocopy of the deed filed before the Assessing Officer was not accepted because it had not been witnessed by anybody. The spaces against witness Nos. 1 and 2 were kept blank nor any names or addresses of the witnesses were given. An opportunity was granted by the CIT (A) to produce the original deed of dissolution, which was not produced. It led to the conclusion that no contemporary evidence regarding discontinuance of business w.e.f. 30.9.1981 was available on record. Original deed of dissolution had not been produced before any authority and merely a photocopy of the dissolution deed was produced, which has not been duly signed by the witnesses.

It is true that failure to intimate discontinuation of business within stipulated period of 15 days may not entitle the department to treat the business as still continuing, yet, discontinuation of the business may have to be proved as a fact. It may be appropriate to mention that the amendment made in Section 272A in the year 1986 contemplates imposition of penalty but the present case relates to the assessment year 1982-83. it is necessarily a question of fact, which has to be proved by adducing cogent evidence. The assessee in the present case has miserably failed to adduce any cogent evidence proving discontinuation of business as contemplated by Section 176 of the Act. Therefore, clubbing of income of Rs. 93,250/- in the hands of the assessee deserve to be upheld. Accordingly, we hold that the income has been rightly clubbed.

For the reasons aforementioned, the question is answered against the assessee and in favour of the revenue.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 23, 2007

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